IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 37 OF 2002

Shri P. B. Ghadi,
of major age,
resident of Ghadi
Wada, Karapur,
Sanquelim – Goa. ... Petitioner

versus

1. State of Goa,
   through its
   Chief Secretary,
   having office at
   Secretariat,
   Panaji–Goa.

2. The Chief Electrical
   Engineer, Government
   of Goa, having office
   at Electricity
   Department, Panaji–Goa. ... Respondents

Mr. M. S. Sonak, Advocate for the Petitioner.

Mr. Guru Shirodkar, Additional Government Advocate for the Respondents.

CORAM : SMT. NISHITA MHATRE &
P. V. HARDAS, JJ.

DATE : 28TH JANUARY, 2004.

ORAL JUDGMENT(PER P.V.HARDAS, J.)

This Petition, seeks the following reliefs:

(a) To direct the Respondents to grant Petitioner promotion to the post of Upper Division Clerk with effect from the date of sealed cover;

(b) To direct the Respondent No.2 to grant Time Bound Promotional Scale to the Petitioner with effect from 1986 with all consequential benefits;

(c) To grant the Petitioner Pre-revised Scale in the Cadre of Lower Division Clerk as has been granted to other similarly situated persons with effect from 31/7/1996;

(d) To direct the Respondent No.2 to fix Petitioner's scale in the Cadre of Lower Division Clerk corresponding to Pre-revised Scale in terms of order dated 19/2/1998 issued by Respondent No.1 on recommendations of the Vth Pay Commission Report;

(e) To direct the Respondent No.2 to grant Fitness Weightage of 40% Revised Pay Scale with effect from 1/1/1996 in terms of order dated 11/4/2001;

(f) To direct the Respondents to grant Petitioner 100%

pay and allowances for the period of suspension and dismissal from service without deducting the Subsistence Allowance granted to the Petitioner.

(g) To direct the Respondents to grant increment to the Petitioner for a period of penalty of reduction of scale for one year.

2. In view of the limited controversy which now survives in the Petition, we will advert to the facts as are necessary for the decision of this Petition.

Undisputedly, the Petitioner came to be appointed on temporary basis as a Lower Division Clerk in the Electricity Department on 8th August, 1968 and was thereafter confirmed in the said post. On 12th October, 1979, the Petitioner was kept on suspension on the ground that the Disciplinary Proceedings were contemplated against the Petitioner. Somewhere in November, 1979, a Criminal Proceeding had also been filed against the Petitioner. Further to the completion of the Departmental Proceedings, a major penalty of dismissal from service came to be imposed on the Petitioner. The said Order was challenged by the Petitioner before the Appellate Authority who dismissed the Appeal filed by the Petitioner. In view of the dismissal of the

Petitioner's Appeal, the Petitioner filed Writ Petition No.145 of 1990 in this Court. This Court by its Judgment dated 28th November, 1995, remitted the matter back to the Disciplinary Authority for considering the question of punishment afresh. The Disciplinary Authority, in terms of the Order of this Court, by Order dated 9th May, 1996, imposed a penalty of reduction of pay by two stages i.e. from Rs.1,325/- to Rs.1,275/-. The Disciplinary Authority then further held "further, he will earn increment of pay during the period of reduction and that on expiry of this period the reduction will not have the effect of postponing of future increment of pay".

3. The Government of Goa framed the "Time Bound Promotional Scheme" which is annexed to the Petition as Annexure R1 dated 5th July, 1989. The said Scheme came into effect from 1st June, 1989 on certain terms and conditions. Condition No.2 contemplates that an employee should have put in at least 12 years of service in the existing post before he is entitled for the Time Bound Promotional Scale(hereinafter referred to T.B.P.S. for the sake of brevity). Since, the Petitioner has been denied the benefit of the T.B.P.S. Scale, which he claims, he is entitled to, the present Petition is filed.

4. It may incidentally be stated that by Order dated 10th September, 2001, issued by the Chief Electrical Engineer, the period of suspension from 12th October, 1979 to 24th April, 1980 and the period spent on dismissal w.e.f. 26th October, 1988 to 12th May, 1996 came to be regularised by granting of Extra Ordinary Leave. Thus, the Petitioner was reinstated with continuity in service.

5. In respect of prayer clause (a), Mr. M. S. Sonak, learned Counsel appearing on behalf of the Petitioner states that he does not press this relief in the present Petition. In respect of prayer clause (c), Mr. Sonak, learned Counsel appearing on behalf of the Petitioner points out that the Respondents in their Affidavit in para 10 have conceded that the Petitioner is entitled to the relief claimed in prayer clause (c). In respect of prayer clause (d), it is pointed out by the learned Counsel appearing on behalf of the Petitioner that the Respondents in para 12 have conceded that the Petitioner is entitled for the relief prayed for in the said prayer clause. Similar is the situation in respect of prayer clause (e) as the Respondents in their Affidavit at para 14 have conceded that the Petitioner is entitled for the relief prayed for in the said prayer clause. As far as prayer clause (f) is concerned, the learned

Counsel appearing on behalf of the Petitioner has stated that he does not press for this relief in this Petition.

6. We are, therefore, called upon to adjudicate if the Petitioner is entitled for the reliefs prayed for in prayer clause (b) and prayer clause (g).

7. In respect of prayer clause (g), it is brought to our notice by the learned Counsel appearing on behalf of the Petitioner that a similar question came up for consideration before the Division Bench in Writ Petition No.36 of 2002, to which one of us(Hardas, J.) was a member.

8. The Order in the present Petition dated 9th May, 1996, was an Order similarly worded as the Order in the earlier Writ Petition namely Writ Petition No.36 of 2002. In the present Petition, since the Authorities have held that the Petitioner would earn increment of pay during the period of reduction and that on expiry of the period the reduction will not have the effect of postponing future increment of pay, according to us, the Petitioner is entitled for the relief prayed for in prayer clause (g). The Division Bench in Writ Petition No.36 of 2002 by

Judgment dated 17th December, 2003, has also allowed a similar relief to the Petitioner therein based on the operative part of the Order dated 9th May, 1996. Therefore, according to us, the Petition will have to be allowed in respect of prayer clause (g) and the Respondents are directed to grant increment to the Petitioner for the period of the penalty of reduction of scale for one year.

9. That takes us to the prayer clause (b), in which the Petitioner has prayed that he be granted the T.B.P.S. from 1986 with all consequential benefits.

10. In this regard, Mr. M. S. Sonak, learned Counsel appearing on behalf of the Petitioner has placed reliance on a Division Bench Judgment in **Shri A. V. Prabhu Gaonkar** v. **State of Goa and another** in which the Division Bench in respect of the Petitioner therein who was similar circumstanced had granted the T.B.P.S. benefit w.e.f. 1986.

11. Mr. Guru Shirodkar, learned Additional Government Advocate appearing on behalf of the Respondents has urged before us that in **Shri A. V. Prabhu Gaonkar** v. **State of Goa and another**(supra) the Division Bench had granted the relief of T.B.P.S.

w.e.f. 1986 in view of the concession which was made by the learned Government Advocate representing the Respondents therein in a Civil Application No.311 of 2002. Therefore, according to Mr. Shirodkar, learned Additional Government Advocate appearing on behalf of the Respondents, since the relief was granted to the Petitioner therein, on the basis of concession, the Petitioner herein would not be entitled to the same relief which was granted in the earlier Petition.

12. The T.B.P.S. Scheme, dated 5th July, 1989, states that it shall come into effect from 1st June, 1989. Admittedly, the Petitioner had completed 12 years of service when the T.B.P.S. Scheme came into effect. The Respondents, however, in their Affidavit have stated that since the Petitioner had not put in continuous service as he was under suspension and had been dismissed, the Petitioner would not be entitled for the T.B.P.S. scale w.e.f. 1989. It is further stated in the Affidavit that a Criminal Case was pending against the Petitioner and on that count also the Petitioner would not be entitled for the T.B.P.S. scale w.e.f. 1989. According to us, the submission on behalf of the Respondents has absolutely no merit. The dismissal of the Petitioner came to be set aside and the Petitioner was reinstated in the post with

continuity of service. The period came to be regularised by granting Extra Ordinary Leave. Thus, according to us, since the Petitioner was reinstated in service with continuity in service, the Petitioner cannot be denied the benefits of T.B.P.S. w.e.f. 1989 as he was otherwise entitled to.

13. Mr. Shirodkar, learned Additional Government Advocate appearing on behalf of the Respondents has also urged before us that as per Clause 4 of the T.B.P.S. Scheme, the T.B.P.S. benefits can only be granted if the employee is recommended by the Departmental Promotional Committee. From the Judgment in **Shri A. V. Prabhu Gaonkar** v. **State of Goa and another**(supra) we find that though expressly no submission in this behalf was made, we find from the Affidavit filed therein particularly at para 7, it was urged that the Petitioner therein would not be entitled for the benefits of the T.B.P.S. as T.B.P.S. could only be granted as per the rules.

14. According to us, this would not be a ground to deny the Petitioner the similar benefit which was given to the Petitioner in Writ Petition No.36 of 2002. Even otherwise, since we have held that in view of the reinstatement of the Petitioner, it

cannot be contended by the Respondents that there was a break in service, the Petitioner would be eligible for the benefits of T.B.P.S. with effect from 1989 as undisputedly, the Petitioner had put in 12 years of service in the said post. We, therefore, find that the Petitioner has been wrongly denied the benefit of the T.B.P.S. Scheme which the Petitioner ought to have been granted w.e.f. 1989. In fact, it is stated before us that employees who had put in 12 years of continuous service have been granted the benefit of T.B.P.S. Scheme w.e.f. 1989. The only ground on which the Petitioner's case is sought to be distinguished is that the Petitioner had been dismissed from service and also that a Criminal Case had been filed against him. We have already held that since the Petitioner was reinstated in service with continuity in service, the dismissal from service cannot be used as a lever against the Petitioner to deprive him of the benefit of T.B.P.S. Scheme. In view of this, according to us, the Petitioner is entitled for the benefits of the T.B.P.S. Scale w.e.f. 1989. The Judgment of the Division Bench of this Court in Writ Petition No.36 of 2002 **Shri A. P. Prabhu Gaonkar** v **State of Goa and another,** granting the T.B.P.S. Scheme w.e.f. 1986 will have to be, therefore, restricted to the facts of that case and cannot be applied to the

present case to contend that the Petitioner herein should also be granted T.B.P.S. Scheme w.e.f. 1986.

15. In the light of above, Rule is made absolute in terms of prayer clauses (c), (d), (e) and (g). Rule is made absolute in terms of prayer clause (b) by holding that the Petitioner is entitled for the benefit of T.B.P.S. Scheme w.e.f. 1989. Rule made absolute with no order as to costs.

SMT.NISHITA MHATRE, J.

P. V. HARDAS, J.

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